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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,099	07/29/2003	Richard John Schmidt	18174A	6365
23556	7590	08/01/2005	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			TORRES VELAZQUEZ, NORCA LIZ	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 08/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/629,099	Applicant(s) SCHMIDT ET AL.	
	Examiner Norca L. Torres-Velazquez	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18, 24 and 26-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18, 24 and 26-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11604 50905</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed May 9, 2005 have been fully considered but they are not persuasive.

- a. Applicants have canceled claims 19-23 and 25.
- b. Claim 1 has been amended to further recite that the second layer comprises a high loft spunbond nonwoven web material that comprises crimped multicomponent filaments, and wherein the crimped multicomponent filaments have latent crimp which is activated after the multi-component filaments are laid-down on a forming wire.
- c. Applicants argue that the combination of Tilton and Thompson is not proper. Applicants indicate that Tilton relates to an acoustic insulation that is formed as a laminate of layered materials and that the Thompson material is a composite mixture formed as an intimate mixture of meltblown fibers with staple fibers and it does not appear to be layered or laminate material of any sort. Applicants further note that there is no teaching with respect to multicomponent meltblown fibers at all in the Thompson reference.

The Examiner relies in the Thompson reference to modify the layer 14 of Tilton with multicomponent fibers to enhance the integrity of the layer for further processing during lamination. Applicants' arguments indicating that the combination of references is noted herein but is not persuasive because the Examiner is relying on the benefits that the use of such multicomponent fibers as taught by Thompson will provide to the laminate of Tilton and not bodily incorporating one structure into the other. With regards to the multicomponent meltblown fibers, Applicants are directed to Col. 6, lines 36-59 which teaches melt-blown bicomponent micro fibers.

d. Applicants further submit that one would not still be further motivated to combine Pike et al. with Tilton and Thompson because there is no recognized need to be found in Tilton to augment the already thick layer of Tilton by combining it with the teachings of Pike et al.

Arguments are not persuasive because alternatively the bulk of the layer may be achieved by using the splittable and/or crimpable fibers of PIKE et al.

e. With regards to arguments indicating that the crimped fibers of the Pike et al. reference are produced by crimping the fibers while in the drawing unit and before they are laid-down on the forming surface versus activating the latent crimp after the multicomponent filaments are laid-down on a forming wire are not persuasive because these are process limitation and the final product has the claimed crimped multicomponent filaments. It is noted that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983). It is noted that if the applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims

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and how the Comparative Examples are commensurate in scope with the combination including the crimped filaments of the PIKE et al. reference.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on January 16, 2004 has been considered by the Examiner and a copy of the considered form is submitted herein.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-18, 24 and 26-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over TILTON (US 2004/0023586A1) in view of THOMPSON (US 5,841,081) and PIKE et al. (US 5,759,926).

TILTON discloses a fibrous blanket material 10 having a first fibrous layer and a layer of meltblown polypropylene. (Abstract) In Figure 1 of the reference (shown below), shows the polypropylene meltblown layer 14 and the first fibrous blanket layer 12. The first fibrous layer 12 typically is provided with a thickness of between about 0.5 to about 8.0 cm. The first fibrous layer has an average fiber diameter of between about 10.0 and about 30.0 microns and a density of between about 0.5 and about 8.0 lbs/ft³ [8-128 kg/m³]. The layer 14 of meltblown polypropylene fibers has a thickness of between about 0.0127 to about 0.254 cm, a weight of between about 0.5 to about 10.0-ounces/sq. yard [0.01695-0.3391 kg/m²]. The meltblown

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polypropylene fibers of the layer 14 have an average diameter of between about 2.5 to about 50.0 microns. (Refer to paragraphs [0023-0024])

The Examiner equates layer 14 of TILTON to the presently claimed first layer. The Examiner has calculated the density of this layer based upon the basis weight and the thickness of the layer taught by TILTON. A density of 133 kg/m^3 is obtained when the layer has a basis weight of 0.5 oz/yd^2 [0.01695 kg/m^2] at a thickness of 0.0127 cm. Therefore, a density of 133 kg/m^3 meets the limitation of at least 50 kg/m^3 claimed herein. It is further noted, that with the range of values for the thickness and basis weight taught by TILTON, densities as low as 6.67 kg/m^3 can be obtained. The range of fiber diameter taught by TILTON meets the claimed fiber diameter. Layer 12 of TILTON is equated to the claimed second layer comprising a high loft material. It is noted that the term "high loft material" has been described to be a material with a z-direction thickness generally in excess of about 3 mm. (Specification page 6, lines 15-22) The thickness of the fibrous blanket layer 12 of TILTON has a thickness of about 5 mm to about 80 mm.

With regards to claim 2, it is noted that layer 14 of TILTON has a thickness of 0.0127-0.254 cm [$0.127 - 2.54 \text{ cm}$]. (Refer to [0024])

With regards to claims 3 and 4, TILTON teaches average fiber diameter from 2.5 to 50 microns. (Refer to [0024])

With regards to claims 5 and 6, the thickness taught by TILTON meet the presently claimed thickness. With regards to the density of the nonwoven web, it is the Examiner's position that the combinations of thickness and basis weight taught by the reference meet the

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claimed densities. For example, at a thickness of 0.3 mm and a basis weight of 0.018 kg/m², the density of the layer is 60 kg/m³.

With regards to claims 7, 8, 9 and 12, it is noted that the reference teaches using meltblown polypropylene fibers. [0024]

It is noted that the reference teaches using fiber material such as polyester and fiberglass. (Refer to [0026])

With regards to claims 26-29, the reference teaches a thickness of between about 0.5 and about 8.0 cm [5-80 mm] for layer 12. (Refer to [0023])

With regards to claims 30-31, the reference teaches that layer 12 is formed by any suitable manner known in the art and that it may incorporate multicomponent fibers. (Refer to [0028])

With regards to claim 35, the reference teaches an additional layer 16.

However, TILTON is silent to the use of multicomponent fibers in the layer 14 (first layer of the present invention). TILTON is also silent to the splittable multicomponent fibers claimed herein and the crimped multicomponent filaments claimed herein.

THOMPSON is also directed to an acoustical insulation material and the reference discloses positioning the material between a source area and a receiving area such that a major face of the insulation intercepts and attenuates sound waves passing from the source area to the receiving area. (Abstract) The reference teaches the use of meltblown bicomponent micro fibers that include polyolefins such as polypropylene and polyethylene in blends. (Col. 6, lines 39-56) The reference further teaches fibers with side-by-side configuration. (Col. 7, lines 1-2)

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It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the layer 14 of TILTON and provide it with multicomponent fibers with the motivation of providing the web layer with materials that have an adhesive component and a supporting component arranged in a coextensive side-by-side configuration along the length of the fiber that will provide the layer with sufficient integrity that it can withstand handling and further processing during lamination.

However, TILTON and THOMPSON are silent to the splittable multicomponent fibers claimed herein and the crimped multicomponent filaments claimed herein.

PIKE et al. teaches that crimped splittable conjugate fibers are highly useful for producing lofty nonwoven fabrics since the fine fibers split from the conjugate fibers and the crimps increase the bulk or loft of the fabric. This type of fabric exhibits desirable strength properties of a fabric containing highly oriented fibers. (Col. 5, lines 29-39). On Figure 1, the reference shows a side-by-side conjugate fiber configuration.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to provide the insulation of TILTON with splittable and/or crimpable fibers with the motivation of increasing the bulk or loft of the fabric or alternatively the bulk of the layer may be achieved by using the splittable and/or crimpable fibers of PIKE et al.

Although the references above do not explicitly teach the claimed pressure drop, it is reasonable to presume that this property is inherent to the fibrous blanket material from the combination above. Support for said presumption is found in the use of like materials (i.e. a material comprising a first layer with similar density and thermoplastic fiber diameters similar to those claimed herein, further a second layer with similar structure to the second layer claimed

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herein.). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of a pressure drop of at least 1 mm of water or between about 3 mm and about 10 mm of water at a flow rate of about 32 liters/min would obviously have been present one the product from the combination of Tilton, Thompson and Pike et al. is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102. Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner, et al.* (CCPA) 186 USPQ 80

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1, 2, 32-34 and 36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5, 9 and 13 of U.S. Patent No. 6,669,265 (Application No. 10/160,776) in view of PIKE et al. (US 5,759,926).

Although the conflicting claims are not identical, they are not patentably distinct from each other because the insulator of the copending application comprises most of the limitations of the present invention, however, it fails to teach the presently claimed crimped multicomponent

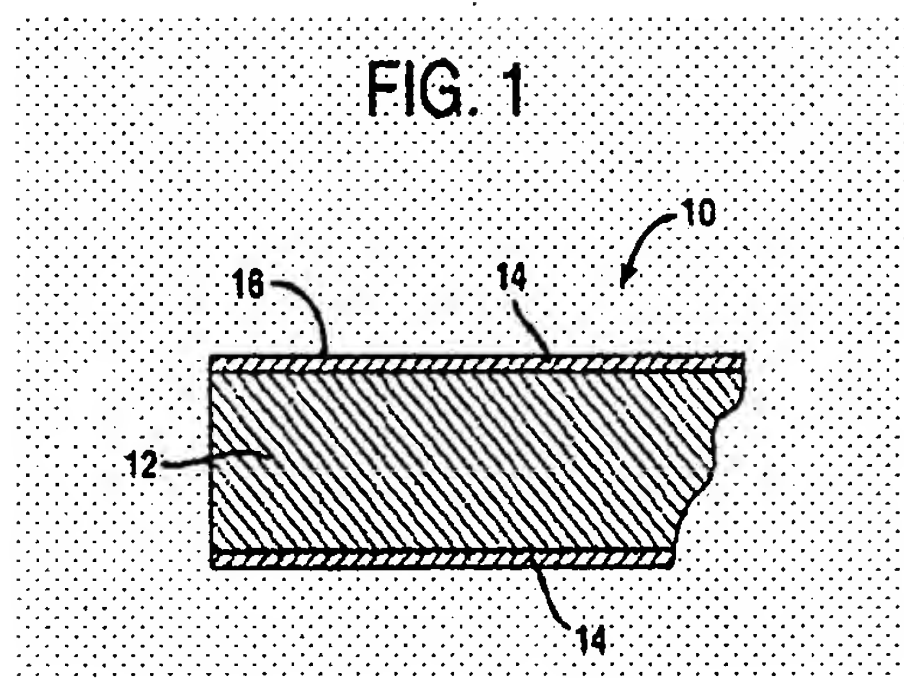
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filaments. PIKE et al. teaches that crimped splittable conjugate fibers are highly useful for producing lofty nonwoven fabrics since the fine fibers split from the conjugate fibers and the crimps increase the bulk or loft of the fabric. This type of fabric exhibits desirable strength properties of a fabric containing highly oriented fibers. (Col. 5, lines 29-39). On Figure 1, the reference shows a side-by-side conjugate fiber configuration.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to provide the insulation of the copending application with splittable and/or crimpable fibers with the motivation of increasing the bulk or loft of the fabric or alternatively the bulk of the layer may be achieved by using the splittable and/or crimpable fibers of PIKE et al.

Claim 36 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,893,711 (Application No. 10/212,410) in view of TILTON (US 2004/0023586 A1), TILTON (US 2004/0002274 A1) and PIKE et al. ('926).

Claim 1 of the copending application provides the structure of the presently claimed additional layer of claim 36 of the present invention. However, the copending application is silent to the use of such layer in a laminate as claimed herein. The '586 reference provides an acoustical insulation laminate that comprises the first and second layers claimed herein and teaches the use of an additional layer. However, it fails to teach the use of the additional high-density layer on the side of the second layer. The '274 reference provides such structure in which the high-density layers form the facing layers of the insulation laminate. (Refer to Fig. 1 below)



It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the acoustical insulation material of the copending application and use it as a facing layer with the motivation of producing a laminate that has an enhanced aesthetic appearance as disclosed by TILTON '274 [0002]. With regards to the crimped fibers, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to provide the insulation of the copending application with splittable and/or crimpable fibers with the motivation of increasing the bulk or loft of the fabric or alternatively the bulk of the layer may be achieved by using the splittable and/or crimpable fibers of PIKE et al.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

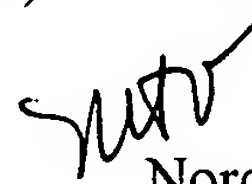
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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Norca L. Torres-Velazquez
Primary Examiner
Art Unit 1771

July 26, 2005